
(1960) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 192-D of 1959

Dhanji Ram Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-04-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 497, 68
Penal Code, 1860 (IPC) — Section 420, 420B, 474

Citation : AIR 1960 P&H 605

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Judgement

(1) The petitioner was holding the post of a Ticket Collector at Delhi in July 1957 having been appointed originally by the General Manager of the Northern Railway in the year 1950. On 16-4-1954 he was removed from service by the order of the Divisional Commercial Superintendent. He challenged the validity of the order of his removal by means of a suit. Shri Hukam Chand Goel, Subordinate Judge, Delhi, held in his judgment dated 28-2-1957 that the petitioner had been appointed by the General Manager and he could not have been removed by an officer subordinate to him. The declaratory suit of the petitioner was consequently decreed (vide Annexure "A"). He was reinstated in service as a Ticket Collector on 20-7-1957 and resumed duty on that day but simultaneously he was placed under suspension. According to the petitioner, he was suspended by the Station Superintendent and in support of this the petitioner has filed a copy of an order dated 26-11-1957 in which it is stated (Annexure "E").

This fact is, however, not admitted by the respondents as will be presently noticed. The petitioner claims to have filed an application before the Authority appointed under the Payment of Wages Act. It appears that on 4-11-1957 he was served with summons under S. 68 of the Code of Criminal Procedure directing him to appear before the Court of Shri Hari Parkash Sharma, Magistrate 1st Class, Delhi, on 12-11-1957 to answer a charge of an offence under S. 474 Indian Penal Code, in a criminal complaint "Roshan Lal Khanna v. Dhanji Ram

Sharma". He appeared in compliance with the summons and executed a bail bound for appearing on such dates as the Court would require him to appear. The order of suspension is challenged by the petitioner on the grounds that he had been suspended in contravention of R. 1711 of the Indian Railway Establishment Code, Vol. I, and that his suspension had been ordered by an authority subordinate to the General Manager.

(1a) Rule 1711 is in the following terms:

"1711. Suspension: (a) A railway servant shall be placed under suspension when he is arrested or committed to prison pending trial by a Court of law, and he shall remain under suspension until judgment is delivered by the Court, unless in the event of his release on bail, the authority competent to suspend him decides to allow him to resume duty pending decision of the Court.

(b) A railway servant whose conduct is undergoing investigation on a charge, the maximum penalty for which is dismissal or removal from service may, at the discretion of the competent authority, be kept under suspension until his case has been finally decided. The period of suspension under this sub-rule should not normally exceed 4 months except with the approval of the authority next above that imposing the penalty."

The position taken up by the respondents in the written statement is that the petitioner was suspended on account of the charges for which he had previously been removed from service and also under sub-rule (a) he had been arrested and, therefore, his suspension was justified. It has not been specifically averred or stated in the written statement of the respondents that suspension was ordered under sub-rule (b) of Rs. 1711. The petitioner who has appeared in person points out that in the first instance his suspension could not have been ordered on the charges for which he had previously been removed because the civil court has finally held that removal was invalid.

He also submits that his suspension was not justified and could not be ordered under sub-rule (b) with respect to those charges. Under that sub-rule only that railway servant can be suspended whose conduct is undergoing investigation on a charge for which the maximum penalty is dismissal or removal from service. This, according to the petitioner, has reference to departmental investigation which may be held or is being held with regard to a railway servant into his conduct.

It has not been shown that any such investigation was being held in the present case. Moreover, the power of suspension under the aforesaid sub-rule cannot normally exceed four months except with the approval of the authority next above that imposing the penalty. In the written statement it has not been mentioned that any such approval has been taken nor has any document been produced to show that any such approval was taken. There is a good deal of force in the contention raised by the petitioner with regard to the non-applicability of sub-rule (b) of Rule 1711 to his case and it must be held that his

suspension has not been and could not be ordered under that sub-rule.

(2) The next question is whether the suspension of the petitioner could be ordered under sub-rule (a) of Rule 1711. The crucial words in that rule for the purposes of this case are "when he is arrested or committed to prison pending trial by a Court of law." Now, it is an admitted fact that although the petitioner was summoned to answer a charge of a complaint under S. 474, Indian Penal Code, in the summons he was only required to appear in person before the Magistrate. The petitioner did appear before the Magistrate and was released on bail.

This happened on 12-11-1957. In *Pulin Behari Chakraborty Vs. The Divisional Superintendent, Sealdah East Indian Rly. and Others*, Bose J. held that this was not tantamount to arrest as all that the Magistrate did was to grant a bail for the purposes of securing the future attendance of the petitioner in Court. A railway servant in that case also had been summoned to answer a charge under Ss. 420/120B, Indian Penal Code, and on the view that he had never been under arrest nor had he been in police custody the order of his suspension was quashed.

(3) The learned counsel for the respondents contends that the language employed in S. 497, Criminal Procedure Code, is that when the person accused of a non-bailable offence appears before a Court, he shall be released on bail and that the use of the word "release" presupposes arrest. In other words, only that person can be released who has been under arrest or is arrested. Reliance has also been placed on a Full Bench decision of this Court in *Amir Chand v. The crown* (1949) 51 Pun LR 330: (AIR 1950 EP 53) in which it was held that the very notion of bail presupposed some form of previous restraint.

Therefore, bail could not be granted to a person who had not been arrested and for whose arrest no warrants had been issued. That case, however, related to anticipatory bail and can be of no material assistance in deciding the question that when a person appears in response to a summons to answer a charge of a complaint and execute a bail bond for future appearance in Court he can be regarded to have been arrested at any stage prior or subsequent to the grant of the bail. At any rate, even if the contention put forward by the learned counsel for the respondents on this point be assumed to be correct, the order of suspension would still be had as it was made, long before the petitioner was bailed out by the Criminal Court.

(4) The next main contention of the petitioner is that the order of suspension was not made by the General Manager. Reference has also been made to Annexure "G" filed with the petition. The respondents have, however, attached a copy of an order which is signed "for General Manager (P)" dated 14/17th June, 1957. In the written statement which had been filed before the Authority appointed under the Payment of Wages Act dated 25-7-1958 (Annexure "G" to the petition) it was stated in paragraph 1 that the petitioner had been suspended by the "D. C. S." which I am informed means the Divisional Commercial

Superintendent.

The learned counsel for the respondents submits that it was under some misapprehension or mistake that the aforesaid written statement continued the said averment. Even if that explanation be accepted, still the fact remains that the order was made by the General Manager (P). In this counter affidavit filed by the petitioner dated 14-12-1959 it has been stated by him that the General Manager (P) is not the General Manager of the Railway. General Manager (P) is only the head of personnel branch and not the Head of a Railway. There are so many other branches and their heads are General Manager (Commercial), General Manager (Operating), General Manager (Mechanical).

Their original designations are as Chief Personnel Officer, Chief Commercial Superintendent, Chief Operating Superintendent, Chief Mechanical Engineer and so on. General Manager (P) is Chief Personnel Officer and is subordinate to the General Manager. One matter is, however, clear that the order is not signed by the General Manager of the Railway and in the absence of any other material, I do not see why the statement made in the counter statement with regard to the various officers and their designations should not be accepted. I am, therefore, of the view that even the order of suspension was not made by the competent authority, namely the General Manager.

(5) For the reasons given above, this petition must be allowed. An appropriate writ will, therefore, issue directing the respondents to treat the order of suspension as void, ineffectual and inoperative. I leave the parties to bear their own costs.

FD/D.H.Z.

(6) Petition allowed.